INDEPENDENT
ENERGY
PRODUCERS

To: **Gary Collord**
CARB
From: **Steven Kelly**
Policy Director
Date: **December 10, 2009**

RE: **COMMENTS FOR RES CONCEPT OUTLINE**

The Independent Energy Producers Association ("IEP") is pleased to comment on the California Air Resources Board (CARB) "Proposed Concept Outline for the California Renewable Electricity Standard" or RES (October 2009). Provided below are initial principles that IEP recommends for consideration when designing and implementing the RES. In addition, we have provided specific feedback to questions posed by staff in the Proposed Concept Outline (Outline).

I. General Comments and Proposed Principles for Consideration

The focus of the RES program is to adopt a regulation consistent with the 33% renewable electricity energy target established in EO S-14-08. The Concept Outline provides a preliminary draft of the concepts developed for the RES regulation used to implement EO S-14-08. As noted in the Concept Outline, "Renewable generation obligations on regulated parties established by the current RPS program would continue in force. In general, renewable generation used to meet these obligations would count towards compliance with ARB's RES."[1] IEP supports this general commitment. In addition, we recommend consideration of the following principles when designing and developing the RES regulation to implement EO S-14-08.

a. Do No Harm – Support Existing Investment Commitments in the "Pipeline."
The California RPS standard has been in place for many years. During this period, in spite of nearly continual changing of program rules by the legislature and lead agencies, a significant amount of business activity has emerged. This activity includes extensive renewable development planning, siting, and construction. In addition, extensive contracting for new and/or repower resources have occurred. Billions of investment dollars are committed to help California meet its renewable goals. CARB should be mindful of this infrastructure investment, and not undertake regulatory/programmatic changes that undermine this investment.

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[1] CARB Proposed Concept Outline for the California Renewable Electricity Standard (October 2009), p. 1.

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b. **Maintain Measure of Regulatory Certainty Supporting New Investment.** As the state moves to expand its renewable program goals to 33%, it will be important to take steps to ensure timely and cost-effective investment in new renewable resources, including transmission and generation. For the financial community to support the significant investment needed to achieve these goals, a strong measure of regulatory certainty must prevail. The essential building blocks to achieve RPS compliance are in place through years of work by the CPUC and the CEC. This work should not be overlooked, nor altered unless compelling evidence/argument exists to make such changes. In the near term (example for next year), a rebuttable presumption should apply that the existing CPUC/CEC program design elements are sufficient and necessary to maintain continuity necessary to maximize the probability of achieving 33% renewable penetration by 2020.

II. Specific Feedback on Questions Posed

In response to specific questions posed in the Concept Outline, IEP offers the following comments.

a. **Should a Threshold Be Applied for Application of the RES to load-serving entities (LSEs)?** IEP does not endorse creating a threshold for the application of the RES to LSEs. Many means exist for all LSEs irrespective of size to contribute to the statewide goal of achieving a 33% penetration of renewables based on retail sales. For example, bundled and/or unbundled Renewable Energy Certificates (RECs) are specifically designed to accommodate the often unique characteristics of small LSEs and/or LSEs that see significant swings in load from year-to-year. To begin the process of creating exemptions through the application of thresholds raises a host of issues, not the least of which is concerns over (a) setting the standard and annually counting LSE load against such standard; (b) cost-shifting amongst LSE's, and (c) creating incentives that will foster unintended consequences once a "loophole" is created for LSEs to avoid RES compliance.

   Regarding the appropriateness of including the California Department of Water Resources and the federal Western Area Power Authority as regulated parties in the RES (question posed, page 9), IEP believes that at a minimum the load served by these parties should be captured in the RES program.

b. **Appropriateness of including other technologies and modifying existing RPS program limitations?** Over the past six years, the legislature has debated and resolved a number of issues related to achieving a specific target of renewable penetration. Importantly, the legislature has been particularly clear on the definition of renewables that would count toward RPS compliance. IEP does not believe that this definition need be modified by the CARB for purposes of RPS compliance absent legislative action. Accordingly, IEP agrees that the definition of eligible renewable resources should defer to the CEC/CPUC determination(s) and, importantly, not be expanded to include large hydroelectric or non-renewable generating facilities such as nuclear facilities. To do so would make a mockery of the 33% standard, as the original RPS standard was set at a level that specifically recognized that large hydro and nuclear facilities would not be included in the counting of compliance; otherwise, the RPS target would have been set much higher than it has been set. Moving to a 33% compliance obligation while incorporating large hydro and/or nuclear is to simply move backwards in terms of RPS goal attainment because existing large hydro and nuclear will provide more than enough energy to meet today's goals without any real increase in "clean" electric generation to the grid.

c. **Potential impact of modifying the deliverability requirements for out-of-state generating resources?** IEP does not believe any change in the deliverability requirements is warranted at this time. Consistent with legislative direction, the CEC has an operating protocol for determining the eligibility of out-of-state resources consistent with the direction of the legislature that includes (a) a requirement to consider the environmental impacts of out-of-state resources in light of California environmental law, (b) a specific deliverability requirement, including a "firming and shaping" requirement to match delivered of out-of-state resource generation to better match in-state load. This approach is working and should remain for the time being.

d. **Purchase and Use of Renewable Energy Credits (RECs).** IEP supports the use of bundled and unbundled RECs to help meet RPS compliance. Particularly in today's environment in which developing in-state renewable resources faces tremendous siting and transmission constraints, providing LSE's with a tool such as RECs to meet RPS/RES compliance obligations is necessary.

e. **Measuring Compliance of RES (Metric Options).** The staff has suggested that one option for monitoring RES compliance would be to measure compliance based on MWhs of eligible renewable generation obtained by regulated parties. The staff has noted that another option would be to develop a system whereby verified MWhs of eligible generation would be converted to tons of GHG reductions. Other parties have suggested moving to a direct, life-cycle GHG analysis.

IEP strongly recommends that the CARB not move to a direct, life-cycle GHG analysis for purposes of RPS compliance. This type of analysis is intractable and will unnecessarily delay program implementation. As a result, this approach will (a) undermine the tremendous capital investment poised for future renewable infrastructure investment in California today under the current structure, and (b) potentially undermine the billions of capital investment already committed to CA's RPS under existing and/or pending contracts. Changes in the status quo, i.e. an approach of measuring compliance in anything other than MWhs (i.e. renewable sales) could have dramatic and significant unintended consequences.

On the other hand, to the extent that GHG emissions considerations are important above and beyond the Executive Order's determination that 33% is an appropriate renewable goal, we recommend maintaining compliance showings from LSEs based on a percent of retail sales (i.e. MWhs) and then impute a CARB calculated emissions reduction benefit for use in determining progress toward the AB 32 emission reduction goals. This will have the advantage of not undermining (nor delaying) on-going procurement practices that are critical to ensuring that the state move forward rather than backward in renewable procurement. To the extent that the emissions benefit is to be calculated/imputed by CARB, the staff has inquired as to whether to employ a “uniform GHG emission reduction factor” or, alternatively, employ an “average marginal emission reduction factor by balancing authority.” At this point, IEP recommends employing the “uniform” approach for the reasons stated in Attachment 1: namely, (a) consistency with status quo and thus less likely to result in unintended consequences in near term, (b) administrative simplicity and thus less likely to delay program implementation, and (c) consistency with the CARB Scoping Plan and thus providing a measure of regulatory/programmatic certainty important for developers and LSE’s alike.

f. **Should Compliance Schedule be Annual or on a different compliance schedules?** IEP believe that RES compliance should be measured as a percentage of MWhs delivered to load annually. We recognize, however, that new renewable development can occur in phases, essentially resulting in “lumpy” additions to the electric grid. Accordingly, we can support some measure of flexible compliance. IEP recommends consideration of an annual compliance goal, subject to annual reporting, and then firm compliance obligations set on a firm three year compliance schedule.

g. **Generation of RES Compliance Credits.** As IEP understands this concept, it is akin to integrating into overall program design the concept of borrowing and banking. IEP supports banking of RES credits, but has concerns with RES Credit Banking if the banking is employed to delay attainment of compliance obligations. RECs, which must be certified and tracked within the WREGIS accounting system, should be retired upon use by an LSE for purposes of RES compliance.

III. Conclusion

For the initial stage of CARB’s RES program implementation (e.g. the next 12-24 months), IEP recommends that CARB not take takes steps that would change major existing program design and, thereby, undermine the significant capital investment committed now and soon to be committed to assist California in meeting its renewable goals. Rather, build off of the existing programmatic infrastructure structured by the CPUC and CEC for the RPS, and utilize this infrastructure to purposes of RES program design and compliance. This approach would suggest maintenance of regulatory certainty and stability in such critical areas as (a) definitions of eligible renewable resources, (b) measuring compliance in terms of percent (%) of retail sales (i.e. MWhs) rather than GHG reductions, and (c) supporting current deliverability language to provide for necessary renewable project development across California’s borders in known renewable resource areas, and (d) allowing a reasonable amount of RECs to assist LSEs in achieving RES compliance in a timely and cost-effective manner.

Respectively submitted,

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